

HOUSE OF REPRESENTATIVES

136TH GENERAL ASSEMBLY

HOUSE BILL NO. 248

AS AMENDED BY

HOUSE BILL NOS. 2, 4 AND 5  
AND SENATE AMENDMENT NOS. 4, 5 AND 6

AN ACT TO AMEND TITLES 16 AND 19 OF THE DELAWARE CODE RELATING TO THE HEALTH, SAFETY, EMPLOYMENT AND PRIVACY RIGHTS OF NON-SMOKERS AND SMOKERS; AND PROVIDING FOR BALANCED PROTECTION AND ACCOMODATION SAFEGUARDS THEREFORE THROUGH CLEAN INDOOR AIR PROHIBITIONS AND REQUIREMENTS IN PUBLIC PLACES AND IN THE WORK PLACE; AND FURTHER PROVIDING PROTECTION AGAINST UNWARRANTED GOVERNMENT INTRUSION INTO AND REGULATION OF PRIVATE SPHERES OF CONDUCT AND CHOICE WITH RESPECT TO THE USE OR NONUSE OF TOBACCO PRODUCTS IN CERTAIN DESIGNATED PUBLIC AND PRIVATE PLACES; AND FURTHER AFFORDING PROTECTIONS TO PERSONS FROM DISCRIMINATORY AND RETALIATORY EMPLOYERS' ACTIONS FOR PRIVATE CONDUCT AND CHOICE CONCERNING TOBACCO PRODUCT USE OR NONUSE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 27, Part II, Title 16 of the Delaware Code by designating all of said present Chapter as Subchapter I of said Chapter; by re-designating the title to said Chapter 27 as the title to new Part I of said Chapter 27; and by adding a new title to said Chapter 27, which shall read as follows:

"CHAPTER 27. ANATOMICAL BANKS AND DONATIONS."

Section 2. Amend Chapter 28, Part II, Title 16 of the Delaware Code by re-designating all of said present Chapter 28 as new Subchapter II of Chapter 27, Title 16 of the Delaware Code.

Section 3. Amend Part II, Title 16 of the Delaware Code by adding thereto a new Chapter, designated as Chapter 28, which new Chapter shall read as follows:

## CHAPTER 13. CLEAN INDOOR AIR ACT

### §1301. Legislative Intent

The General Assembly finds that it is in the best interest of the people of this State to protect non-smokers from involuntary exposure to environmental tobacco smoke in indoor areas open to the public, public meetings, food service establishments, and places of employment.

The General Assembly recognizes that a balance should be struck between the health concerns of nonconsumers of tobacco products and the need to minimize unwarranted governmental intrusion into and regulation of private spheres of conduct and choice with respect to the use or nonuse of tobacco products in certain designated public areas and in private places.

The General Assembly further recognizes that the free and unrettered exercise of choice with respect to the use or nonuse of tobacco products outside the work place comes within a sphere of private choice and conduct that should be protected from discriminatory and retaliatory employer actions and practices in derogation of that free exercise. The General Assembly finds that the safeguards and protections afforded to nonconsumers of tobacco products in public places and in the work place should be similarly extended to consumers of tobacco products in their personal lives to protect their right of private choice and privacy in the conduct of their personal affairs by prohibiting discrimination in the work place for that free exercise.

The General Assembly therefore accommodates the competing interests of users and non-users of tobacco products by protecting the public from involuntary exposure to environmental tobacco smoke in public places and in the work place while prohibiting discrimination by employers against persons who exercise their right of choice concerning tobacco products in their private life.

12803. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning:

(a) 'Auditorium' shall mean that part of a public building where an audience sits; but shall not include any corridors, hallways or lobbies adjacent thereto.

(b) 'Bar' means any indoor area open to the public, and which is devoted to the sale and service of alcoholic beverages for on-premises consumption and where the service of food is only incidental to the consumption of such beverages. Service of food shall be considered incidental if the food service generates less than forty percent of total annual gross sales. Any bar that generates forty percent or more of total annual gross sales from the sale of food for on-premises consumption shall be a food service establishment.

(c) 'Employer' means any person, partnership, association, corporation or nonprofit entity that employs one or more persons, including the legislative, executive, and judicial branches of State government; any county, city, town, village or

any other political subdivision of the State; and public improvement or special district, public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of State or local government.

d. 'Food service establishment' means any indoor area open to the public or portion thereof in which the business is the sale of food for on-premises consumption and that has an indoor seating capacity of greater than fifty persons including, but not limited to restaurants, cafeterias, coffee shops, diners, sandwich shops or short order sales. A food service establishment shall not include the bar area of such establishment.

e. 'Indoor area open to the public' means any indoor area or portion thereof generally accessible to the public.

(f) 'Place of employment' means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services but that is not generally accessible to the public.

(g) 'Public building' means any building owned or operated by the State, including the legislative, executive, and judicial branches of State government; any county, city, town, village or any other political subdivision of the State; and public improvement or special district, public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of State or local government.

(b) 'Public meeting' means all meetings open to the public pursuant to the laws of the State of Delaware and its political subdivisions.

(c) 'Smoke-free work area' means an indoor area in a place of employment where no smoking occurs. A smoking area shall be clearly designated and separate from any smoking area.

(d) 'Smoking' means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco.

(e) 'Smoking area' means an indoor area in which smoking is permitted. A smoking area shall be clearly designated and separate <sup>to the extent possible</sup> from any area in which smoking is not permitted. In a place of employment, the smoking area shall be separated from a smoke-free work area by some means which is effective in reducing the <sup>(leakage)</sup> of smoke on the smoke-free work area, other than existing ventilation systems or air cleaning devices; provided the employer incurs no additional implementation expense and it is practically and structurally feasible.

(f) 'Tobacco business' means a sole proprietorship, corporation, partnership or other enterprise in which the sale, manufacture or promotion of tobacco, tobacco products and accessories either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental.

#### 52803. Smoking Restrictions

(a) Smoking shall not be permitted and no person shall smoke in the following public places:

- (1) public meetings;

(2) elevators;

(3) government owned and/or operated means of mass transportation when occupied by passengers: including buses, vans, trains, [taxicabs, and limousines] *Question: Are there gov't owned cars, limos?*

(4) public indoor areas of grocery stores with greater than 5,000 square feet;

(5) gymnasiums;

(6) jury waiting and deliberation rooms;

(7) courtrooms; and

(8) healthcare facilities, including hospitals, health care clinics, doctors' offices, or other health care related facilities, other than a nursing home, boarding care facility or licensed residential facility.

(b) Smoking shall not be permitted and no person shall smoke in any public place, except in designated areas. 'Public place' is any indoor area, exclusive of lobbies, open to the public, including but not limited to:

(1) public buildings;

(2) auditoria;

(3) theaters;

(4) museums;

(5) libraries;

~~(6) child day care facilities;~~

*I would take out child care*

(7) all public schools, exclusive of faculty lounges and private offices including elementary, and secondary and vocational schools; except as modified by negotiated contract;

(8) other educational and vocational institutions exclusive of faculty lounges and private offices, except as modified by negotiated contract;

(9) nursing homes; boarding care facilities, licensed residential facilities or a patient's private room therein; and

(10) food service establishments.

(c) The owner, operator or manager of an indoor area open to the public subject to subsection (b) of this Section shall designate a smoking area or areas: A smoking area shall not include any of the indoor areas open to the public set forth in subdivision (a) of this Section.

(d) The owner, operator or manager of a food service establishment:

(1) shall designate a nonsmoking area sufficient to meet customer demand and may not determine that no such demand exists;

(2) shall prominently post notice at each entrance of the establishment advising that a nonsmoking section is available, and each patron shall be given an opportunity to state their preference; and

(3) shall designate a separate area for use by smokers.

(e) Each employer<sup>R</sup> shall adopt and implement a written smoking policy that contains at least the following:

(1) that employers shall provide nonsmoking employees with ~~a~~ smoke-free work area;<sup>S</sup>

(2) that employers shall set aside <sup>sufficient</sup> an area ~~for smoking~~;

*to reasonably accommodate employees who smoke.*

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(3) that employers shall provide for nonsmoking areas in employee cafeterias, lunchrooms and lounges. The nonsmoking area in employee cafeterias and lunchrooms shall be sufficient to meet employee demand.

§2804. Smoking Restrictions Inapplicable

This Chapter shall not apply to:

- (a) Private homes, private residences, and private automobiles;

- (b) Any indoor area where private social functions are being held when seating arrangements are under the control of the sponsor of the function and not the owner, operator, manager or person in charge of such indoor area;

- (c) Limousines under private hire by an individual or corporation; ( )

- (d) Enclosed private boxes in indoor areas;

- (e) A hotel or motel room rented to one or more guests;

- (f) Bars; and

- (g) Tobacco businesses.

- (I) (H) Bowling centers  
(I) (H) Any employer who

- (I) (H) Any employer who implemented a written smoking or non-smoking policy, regardless of whether such policy meets the criteria set forth in §2803 of this Chapter, for the workplace on or before October 1, 1992.

\$2805. Posting of Signs

✓Smoking' or 'No Smoking' signs, or the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a circle with bar across it, shall

see following page



(a) Signs designating the accommodation of smokers and non-smokers shall be prominently posted and properly maintained where smoking is required by this Chapter, by the owner, operator, manger or other person having control of such indoor area.

(b) The signs in the form attached hereto shall identify areas of accommodation and areas in which smoking is permitted. OR The signs shall utilize a red and green accommodation logo to identify places of accommodation; the logo shall be posted in green in smoking areas and in red in non-smoking areas.

(c) The City shall in the affectuation and implementation of the provisions of this Chapter balance and accommodate the legitimate health concerns of nonsmokers with the privacy and freedom of choice concerns of consumers of tobacco products.

#### Penalties.

Any person who violates any provision of this Chapter or any rule or regulation promulgated pursuant thereto shall be subject to an administrative penalty of \$25 for a first violation and not less than \$50 for each subsequent violation.

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**SMOKERS AND  
NON-SMOKERS  
WELCOME**

be prominently posted and properly maintained where smoking is regulated by this Chapter, by the owner, operator, manager or other person having control of such indoor area.

§2606. Implementation; Rules and Regulations

(a) The Department of Labor shall adopt such rules and regulations as are necessary and reasonable to implement the provisions of this Chapter as they apply to employers, employees, places of employment and the work place.

(b) The State Board of Health shall adopt such rules and regulations as are necessary and reasonable to implement the balance of the provisions of this Chapter not effecting employees, employers and the work place.

(c) Any regulations adopted by either the Department of Labor or the State Board of Health shall before implementation be submitted to the General Assembly for consideration, public hearing and comment not later than April 1st of the calendar year in which the regulations are sought to be promulgated. If the Senate and the House of Representatives have not passed a joint resolution by June 30th of the calendar year in which the regulation was submitted to the General Assembly which directs the Department of Labor or the State Board of Health to amend and/or strike the regulation or to take other action, then the Department or the Board may enter a final order adopting the regulations which shall become effective sixty days after said adoption.

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(d) The Department of Labor and the State Board of Health shall in the effectuation and implementation of the provisions of this Chapter balance and accomodate the competing and legitimate health concerns of nonsmokers with the privacy and freedom of choice concerns of consumers of tobacco products. The State Board of Health and the Department of Labor may upon request waive the provisions of this Chapter if it determines that there are compelling reasons to do so, and such waiver would not significantly affect the health and comfort of nonconsumers of tobacco products.

§2907. Penalties

(a) Any person who violates any provision of this Chapter shall be fined \$25.00 for first offense and \$50.00 for any subsequent offense.

(b) Any person who knowingly violates any of the provisions of this Chapter shall for the first offense in addition to the payment of costs be fined not less than one-hundred nor more than five-hundred dollars.

Section 4. Amend Section 711(a) of Title 19 of the Delaware Code, by adding thereto a new subparagraph to read as follows:

3. "Fail or refuse to hire or to discharge any individual or to otherwise discriminate against any individual with respect to that individual's compensation, terms, conditions or privileges of employment because the individual is a non-smoker or smoker or does or does not use other tobacco

products or to require as a condition of employment any employee or applicant for employment to abstain from smoking or to smoke or to use or not to use any tobacco products outside the course of employment as long as the person complies with the provisions of this section and other applicable laws regarding work place policy concerning smoking or the use of other tobacco products during the course of employment.

This section shall not apply where the prohibition of the use of tobacco products is a bona fide occupational qualification or is reasonably and rationally related to the employment activities of the employee. This subsection shall not apply to any organization which has as one of its purposes or objectives the discouragement of the consumption of tobacco products.

Section 5. If any provisions of this Act or any portion thereof or the application or implementation thereof is held invalid, the remainder of the Act or portion of any provision, or the application thereof to other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.

Section 6. If any provision of this Act or any portion thereof or the application or implementation thereof is in conflict with any county or municipal ordinance, the provisions of this Act are preemptive and shall supersede the provisions of said county or

municipal ordinance, provided that said county or municipal ordinance was not in effect on the effective date of this Act."

Section 7. The provisions of this Act shall pre-empt the provisions of any municipal or county ordinance enacted after the effective date of this Act.